

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

JAMES JUNIOR CONYERS, #25915-083,

Petitioner,

v.

ACTION NO. 2:19cv244

JUSTIN ANDREWS, Warden,¹

Respondent.

FINAL ORDER

Petitioner James Junior Conyers ("Conyers"), a federal inmate convicted in the Eastern District of North Carolina and housed in the Federal Correctional Complex in Petersburg, Virginia, filed a *pro se* petition, pursuant to 28 U.S.C. § 2241. ECF No. 1. Conyers challenges his sentence as a career criminal and seeks to have his sentence vacated and to be resentenced without the career criminal enhancement. ECF No. 1 at 3-4, 7-12.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The

¹ After the filing of the petition, Justin Andrews was appointed warden of FCC Petersburg. It is **ORDERED** that the petition shall be deemed amended to substitute Justin Andrews, Warden, as the sole respondent in this proceeding.

report and recommendation, filed March 12, 2020, recommends that respondent's motion to dismiss (ECF No. 5) be granted and Conyers's petition (ECF No. 1) be dismissed without prejudice for lack of jurisdiction. ECF No. 8. Each party was advised of the right to file written objections to the findings and recommendations made by the Magistrate Judge. No objections have been filed, and the time for filing objections has expired.


The Court, having reviewed the record, does hereby adopt and approve the findings and recommendations set forth in the report and recommendation. The Court, therefore, **ORDERS** that respondent's motion to dismiss, ECF No. 5, is **GRANTED**, and the petition for a writ of habeas corpus, ECF No. 1, is **DENIED** and **DISMISSED** without prejudice for lack of jurisdiction.

Conyers has failed to demonstrate "a substantial showing of the denial of a constitutional right," and, therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See *Miller-El v. Cockrell*, 537 U.S. 322, 327, 335-36 (2003).

Conyers is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. R. App. P. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). **If Conyers intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days**

from the date of this Final Order. Conyers may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall forward a copy of this final order to Conyers and counsel of record for respondent.



/s/
Rebecca Beach Smith
Senior United States District Judge

Rebecca Beach Smith
Senior United States District Judge

Norfolk, Virginia
May 6, 2020